

**REMARKS**

Claims 14 and 16 stand rejected under 35 USC 112, first paragraph. In response, Applicant has amended claim 16 by deleting reference to "seed" as suggested by the Examiner. Applicant appreciates the Examiner's assistance in this matter and respectfully submits that claim 8 and 16 are now in allowable condition.

Claims 1-5, 8, 14, 16-17, and 36-37 stand rejected under 35 USC 102(b) as anticipated, or in the alternative, under 35 USC 103 as obvious over the soybean cultivar 9524889614923 described in Luzzi (US Patent No. 6,084,159). In response, Applicant has obtained seed of Monsanto's soybean cultivar 9524889614923 and conducted a genetic test that shows that Applicant's soybean cultivar S52-U3 of the subject application has a genetic fingerprint that is significantly different than that of soybean cultivar 9524889614923. In particular, genetic testing conducted at Syngenta's USST Molecular Marker Laboratory, Stanton, Minnesota show that of the 31 random markers used in the test, 22 were polymorphic. In other words, between the two varieties S52-U3 and 9524889614923, 24 of the 31 markers did not match. Therefore, according to our genetic test, soybean cultivar S52-U3 is only 29% related to the soybean cultivar 9524889614923. Please see Mr. Arbuckle's Declaration enclosed herewith.

In view of the above amendments and remarks, and the Declaration of John Arbuckle, Applicant respectfully submits that the soybean cultivar S52-U3 is not anticipated and is non-obvious in view of the '159 patent, and requests that the Examiner withdraw the rejection based on 35 USC 102(b) or in the alternative on 35 USC 103. Applicant respectfully submits that claims 1-5, 8, 14, 16-17 and 36-37 are in allowable condition.

If any additional information is needed, the Examiner is invited to call the undersigned attorney at (919) 541-8614.

Syngenta Biotechnology, Inc.  
Patent Department  
P.O. Box 12257  
Research Triangle Park, NC 27709-2257

Date: April 21, 2005

Respectfully submitted,



Bruce Vrana, Reg. No. 38,672  
Attorney for Applicant  
Phone: (919) 541-8614